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# RECONSTRUCTING 'TRADITIONAL' JUSTICE FROM THE OUTSIDE IN: TRANSITIONAL JUSTICE IN ACEH AND EAST TIMOR

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## Abstract

*Transitional justice programmes in post-conflict Aceh, Indonesia, and East Timor are often described as acts of bottom-up reconciliation, highlighting both the community focus of the programmes and the inclusion of indigenous justice practices (adat). Traditionally resonant forms of transitional justice are lauded over internationally orchestrated programmes for their presumed legitimacy and efficacy in promoting peacebuilding and reconciliation. This framing ignores the substantial and largely unrecognised role played by external actors in the revitalisation, reconstruction, and in some cases implementation of traditional practices in the transitional justice and peacebuilding programmes in Aceh and East Timor. Moreover, although the use of traditional practices was supposed to improve the effectiveness of the programmes, the reconstruction of 'tradition' by external actors created some new legitimacy and implementation problems. The cases highlight how the instrumentalisation of traditional practices in transitional justice programmes may solve some post-conflict dilemmas but create others.*

**Keywords:** transitional justice, reconciliation, peacebuilding, *adat*, indigenous justice, Indonesia, East Timor

## Introduction

Transitional justice is increasingly understood to play a pivotal role in post-conflict state (re)building and development. Transitional justice can be defined most basically as the way a society confronts the wrongdoings in its past with the goal of obtaining some combination of truth, justice, rule of law, and durable peace (Kritz 2009, 14). The *Encyclopedia of Transitional Justice* documents 23 types of transitional justice, covering a range of formal and informal and punitive and reconciliatory approaches, such as trials, truth commissions, vetting programmes, reparations, amnesties, apologies, and memorials (Stan & Nedelsky 2013). There are many actors that could participate in designing and implementing programmes, such as the affected state itself, international organisations, foreign or domestic non-governmental organisations, foreign powers, local communities, and sub-national groups, to name a few. The measures support a nexus of varied and overlapping goals, including peacebuilding, societal reconciliation, and social and political development (Kritz 1996; Stan & Nedelsky 2013; Stover & Weinstein 2004). Transitional justice measures also support economic development, such as the creation of institutions to enforce property rights and land tenure (Huggins 2009). Roht-Arriaza and Orlovsky demonstrate how reparations promote local level economic

development through social reintegration (2009). In general, transitional justice measures involving a variety of possible actors are explicitly linked to the promotion of broad and interrelated peacebuilding, reconciliation, and development goals (de Greiff and Duthie 2009).

One way to compare transitional justice programmes is to focus on the locus of responsibility for the design and implementation of the programmes. One such framing compares 'community-based justice programs' or 'bottom-up approaches' against 'top-down' transitional justice models (McEvoy & McGregor 2008, 3; Lundy & McGovern 2008, 108). This juxtaposition focuses on whether the transitional justice programmes emerged from and were implemented by the community itself using traditional justice and dispute resolution methods, or whether external actors primarily designed and implemented programmes in affected communities, often incorporating foreign laws and procedures. Implicit in the framing is a current normative assumption that community-driven or 'bottom-up' justice programmes using traditional methods are more legitimate, more participatory, and therefore better at promoting reconciliation and development than programmes designed and administered by external actors (International Disarmament, Demobilization and Reintegration Congress 2009). While some role for the state is implicit in any programme, save those wholly imposed on a state, the focus of bottom-up programmes shifts attention away from national-level actors implementing formal justice measures and towards local or community-based actors employing more traditional measures.

Attention to culturally resonant and community-driven approaches provides needed balance to the early focus on more top-down methods implemented by external actors using Western legal traditions, such as trials and tribunals. However, through highlighting the local implementation of justice and the inclusion of traditional practices in post-conflict peacebuilding and development, the substantial role played by international and external actors in many bottom-up programmes has been minimised or ignored. This creates a false understanding of both the possibilities for and the benefits from programmes exclusively created and implemented by affected communities.

The cases of Aceh (in Indonesia) and East Timor illustrate this point. Transitional justice and peacebuilding in Aceh and East Timor are characterised as bottom-up programmes because of the locally situated nature of the reconciliation processes and the incorporation of traditional conflict resolution and justice measures (*adat*) (DeShaw Rae 2009; Braithwaite et al. 2010; Burgess 2006). In this way

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the programmes promote a combination of transitional justice, truth-telling, and reconciliation as separate but complementary post-conflict peacebuilding and development measures. In these cases, the dual foci of traditional justice practices and locally situated measures are lauded for their authenticity and presumed efficacy as dispute resolution mechanisms (Asian Development Bank [ADB] 2009; United Nations Develop-

ment Programme [UNDP] 2007, 24; Barron et al. 2005). These discussions often understate the role played by extra-regional actors in actually reconstructing and implementing these 'traditional' justice programmes. International actors actively reconstituted indigenous practices or 'traditional justice' measures and implemented them at the community level to address state capacity and resource deficiencies in post-conflict Aceh and East Timor.

This central role for extra-regional actors, either foreign or domestic, in community-level justice programmes has not been matched by close scholarly attention. As Olsen, Payne, and Reiter assert, 'despite evidence that international factors play a vital role [in transitional justice choices], no studies to date have systematically analyzed the effects of international influence on transitional justice' (2010, 80). This study aims to address this perceived lacuna. First, it considers whether there is an unexamined role for external actors in community-driven justice approaches. Related to this, is a bottom-up process truly bottom-up if the initiative and authority for design and implementation resides with external actors? More specifically, what role did international actors play in the revival of traditional justice in post-conflict Aceh and East Timor? Second, do bottom-up approaches address the participation, legitimacy, and efficacy criticisms associated with top-down approaches? This study engages with these questions through an examination of the role of extra-regional actors in local-level peace-building and transitional justice programmes in the paired cases of Aceh and East Timor.

## Bottom-up Approaches to Transitional Justice

'Bottom-up' approaches are reconciliation and transitional justice programmes designed and implemented by the affected communities. They are juxtaposed against 'top-down' approaches in which programmes are designed or administered by actors, either foreign or domestic, that are external to the affected community. There are three key features of bottom-up programmes: having the affected communities themselves generate programmes reflecting their ideas for reconciliation; incorporating traditional practices to confer additional legitimacy on the proceedings; and having locals implement the programmes at the community level in order to facilitate citizen participation (Stover & Weinstein 2004, 12).

'From below actors — meaning peasants, indigenous ... and urban peripheral organized groups; community-based organisations and their networks; grassroots initiatives; victim's organisations; local non-governmental organisations (NGOs); and trade unions' are contrasted with external actors, foreign actors, and even the state as a hegemonic top-down actor imposing ideas on the affected communities (Diaz 2008, 190). In this vein, 'tradition' is locally (re)constituted and understood by the community and refers to customary and indigenous rules, laws, and procedures that enjoy legitimacy partially due to their longevity and historical siting in the community (Bowen 1986, 545). Similarly, 'local' or community-based initiatives mean that justice measures take place at the site of the grievance and are not removed from the locale associated with the offences.

It is not just the community-level locus of the programmes, or the nature of the actors — external or local — but the use of traditional methods that is emblematic of bottom-up approaches. There is a rich scholarship embracing the use of traditional and alternative dispute resolution mechanisms in different cultural and religious contexts from which the bottom-up literature draws (Avruch et al. 1991; Nader & Todd 1978). In particular, Nader and Todd direct attention to the cultural components in each conflict situation, which give meaning to the social relations and must therefore inform acts of reconciliation (1978, 27). To be effective in promoting societal rebuilding the transitional justice intervention should engage with the cultural context and social needs of the affected parties (Daly 2002). Within an Islamic context, Abu-Nimer examines 'the ways in which religious values, beliefs, and rituals are a rich source for the study of conflict resolution, peace, and change' (Abu-Nimer 2000–2001, 218). Using traditionally

resonant and culturally meaningful measures is thought to increase the legitimacy and effectiveness of promoting peacebuilding and development.

There are several broad critiques of top-down programmes which motivate and in many ways define the bottom-up approach. First, despite the ubiquity of top-down methods, like trials and tribunals, there are questions about their actual effectiveness (Olsen et al. 2010, 2). Stover and Weinstein show that tribunals had no positive impact on reconciliation and could even create further suspicion and fear in multi-ethnic societies (2004, 323). Second, top-down programmes are criticised for their insufficient attention to local participation in all phases of the process, from idea development, to local decision-making and programme management (Lundy & McGovern 2008, 100). Community involvement allegedly empowers citizens, and therefore increases the legitimacy and effectiveness of the resulting programmes. Third, top-down programmes are criticised for lacking cultural resonance (Arriaza & Roht-Arriaza 2008, 164). Western justice scripts can crowd out non-Western understanding of justice, leaving little room for the incorporation of traditional practices or alternative understandings of justice (Hinton 2010).

Because the bottom-up approach emerged from a growing sense of discontent with or resistance to the perceived hegemony of top-down programmes, the two approaches are more often contrasted than presented as complements (McEvoy & McGregor 2008; Stover & Weinstein 2004). This juxtaposition is in some ways a disservice to the reticulated top-down and bottom-up processes that are at work in many transitional justice programmes, such as Guatemala and Rwanda (Arriaza & Roht-Arriaza 2008; Burnet 2010). For example, Rwanda's *gacaca* programme is considered an archetype of bottom-up justice in its design for wide citizen participation, the use of traditional justice methods, and its local focus (Karekezi et al. 2004, 78). However, in practice, Rwanda's local justice programme was in many respects reimagined by external actors to meet proximate political needs, thereby reconstituting the process and its sources of traditional legitimacy (Burnet 2010, 98). More accurately describing the mixed elements of cases and unpacking the role of external and community actors in local justice processes will help advance the knowledge of policymakers and practitioners in the design and implementation of effective peacebuilding and development programmes.

## Situating the Cases of Aceh and East Timor in Comparative Perspective

Aceh and East Timor are described by scholars and practitioners as representative examples of bottom-up transitional justice and reconciliation programmes (DeShaw Rae 2009; Braithwaite et al. 2010; ADB 2009; UNDP 2007, 24; Barron et al. 2005). A central role is ascribed to the acts of 'micropolitics massively dispersed among thousands of leaders of villages, clans, churches, mosques and sub-districts' in the process of reconciliation (Braithwaite et al. 2010, 41). Local understandings of peace and justice are privileged (Stanley 2008). 'Justice [in East Timor] is a localized concept that will persist long after foreigners have departed. By necessity the local population has a foresighted view of the future challenges, while international advisers tend to have more limited aims' (DeShaw Rae 2009, 152). Integral to the community-based interpretation of reconciliation is the inclusion of indigenous/traditional (*adat*) dispute resolution procedures in both programmes.

There are many ways of defining *adat*, the focus being on the use of customary practices to guide appropriate behaviour and to correct deviant behaviour. 'Adat can refer to the rules

or practices of social life, to feelings and a sense of propriety, or to a somewhat thinner sense of tradition and custom. It may be used to refer to local ways of resolving disputes, rather than to substantive rules ... often it is counterposed to Islamic law or state law' (Bowen 2003, 13). Regional interpretations of *adat* abound, reflecting its inherent flexibility. The International Development Law Organisation estimated that at least 19 and perhaps as many as 300 distinct indigenous legal systems based on *adat* coexist in Indonesia (Soesangbeng et al. 2009, 147).

*Adat* confers an ideal of security, stability, peace, and authenticity (Li 2007, 336). *Adat's* idealisation and inherent malleability have always made it ripe for political manipulation. Bowen describes this as the 'two faces of *adat*', in which the first face captures a sense of the importance of traditional norms and ideals of consensus, while the second face reifies existing power structures and inequalities (2003, 43). For example, the revival of *adat* in Indonesia, starting in the 1990s, has lent itself to the continued subjugation of women's rights and even the reification of patriarchal and elite structures (Henley & Davidson 2008, 838). The comparative cases will demonstrate that both these faces of *adat* were present in its instrumentalisation in peacebuilding and reconciliation in Aceh and East Timor.

Methodologically, the paper is a structured comparison of the cases of Aceh and East Timor through the post-conflict period up to 2012. Both Aceh and East Timor were involved in protracted separatist conflicts, involving violent conflict between independence fighters and the Government of Indonesia (GOI), as well as conflict perpetrated on local communities by regional militias and independence movements. Both enacted transitional justice and community reconciliation programmes as part of their peacebuilding efforts to address these legacies of violence. Both cases are considered examples of bottom-up, community-driven transitional justice. Given similarities in the post-conflict conditions in the two cases and their similar framing by policymakers and scholars, this research method facilitates the comparative tracing of the involvement of external actors in their respective community-based programmes.

The structured comparison draws on personal interviews conducted in Indonesia in 2010, fieldwork in Aceh in 2010, research done at the Center for Security and Peace Studies, Gadjah Mada University, Indonesia, government and NGO reports, and historical documents. In particular, case details derived from both personal interviews with local actors and interviews conducted by NGOs and international organisations provide a way to assess how the measures were perceived and whether they were accepted by the affected populations. The use of paired cases helps to illuminate the role played by external actors in the revitalisation, reconstruction, and in some cases implementation of traditional practices in the transitional justice and peacebuilding programmes. It highlights that this unexplored and largely unproblematised role played by external actors in bottom-up programmes is not unique to a single case. The similarities across the cases inform tentative conclusions about the challenges posed by reconstructing traditional practice for use in new post-conflict transitional justice programmes.

## Transitional Justice: Design and Implementation

### *Aceh, Indonesia*

Aceh (Nanggroe Aceh Darussalam Province) was embroiled in a nearly 30-year separatist conflict with the GOI (Reid 2006). Starting in 1976, the Gerakan Aceh Merdeka (GAM) or Free Aceh movement began a war to achieve independence (Aspinall 2005). It is estimated that 33,000 people were killed over the 29 years of conflict, with human rights



abuses committed by both GAM and the GOI (Aspinall 2008, 8).<sup>1</sup> Thirty-eight per cent of Acehese reported losing family or friends during the conflict, 24% experienced forced labour, and 40% had property confiscated or destroyed (Aspinall 2008, 9). After the conflict, Acehese communities perceived a need for justice and reconciliation with both former GAM combatants and the GOI.

The GOI and GAM concluded the Helsinki Memorandum of Understanding (MOU)<sup>2</sup> in August 2005, formally ending the conflict, specifying special economic and political autonomy status for Aceh, and laying out transitional justice measures (MOU 2005). The MOU was minimalist in detail, laying out the broad guidelines for an autonomous Aceh without specifying details that might infringe on Indonesia's sovereignty (Aspinall 2008, 15). Post-conflict peacebuilding in Aceh took place simultaneously with post-tsunami reconstruction, the two programmes working in tandem to address statebuilding and larger development needs (Aspinall 2005).

### *Minimal local-level participation in design and implementation*

Neither the GOI nor GAM brought strong concerns for human rights or justice to the Helsinki MOU negotiations. Indonesia did not want to be held responsible for human rights violations within its own country, and the terms of the peace sustained Indonesia's sovereignty over the region (Drexler 2008). The primary focus of GAM in the negotiations was 'the struggle for political power, evolving tensions within the movement, promoting reintegration of former fighters, and managing the funds provided for that purpose' (Barron et al. 2005, 36). GAM wanted to secure the reintegration not punishment of combatants, which was not consistent with the community's perceived need for transitional justice. Getting transitional justice concerns into the peacebuilding process thus required thinking about alternative mechanisms that would neither scupper the peace deal nor violate Indonesia's sovereignty. The international negotiators embraced a community-based reconciliation approach, incorporating 'traditional' justice methods in order to address human rights and justice concerns. As an Indonesian negotiator in the process explained, 'The use of *adat* was driven by the international community in Aceh and East Timor.'<sup>3</sup>

Despite the many accounts describing transitional justice in Aceh as bottom-up, there is no clear evidence of an active role for civil society in the design phase of the transitional justice programme embodied in the Helsinki MOU. There was no independent Acehese representation in the Helsinki process, the negotiations being conducted between the GOI and GAM alone (Barron et al. 2005, 40). There was no mention of civil society or women in the Helsinki MOU (Barron et al. 2009). 'Even some of those involved in facilitating these meetings [with civil society at Helsinki] agree that civil society's contribution was token' (Aspinall 2008, 11). Moreover, ordinary citizens appeared to either not want a role or not understand a potential role, leaving elites in Jakarta, Banda Aceh, and Stockholm to hammer out an end to the conflict and conclude the MOU (Barron et al. 2005, 40). Traditional justice mechanisms and customs were not raised by GAM or GOI. GAM's version of the *Law on the Governing of Aceh*, which would codify self-rule in autonomous Aceh, made no reference to traditional *adat* practices at all (Drexler 2008, 258, n. 4).

The local implementation of the peace and reconciliation programme was also strongly influenced by international actors, in conjunction with their locally affiliated NGOs. For example, determining who was eligible for amnesty under the MOU was an important local justice concern. The Aceh Monitoring Mission (AMM) was designed to implement this part of the MOU; it was led by Peter Feith from the EU, financed from the EU budget,

and reported to the Council of the European Union.<sup>4</sup> There were 11 regional AMM offices across Aceh to oversee the transitional justice mandate, all led by foreign monitors from the EU, Thailand, Malaysia, Brunei, Singapore, the Philippines, Norway, and Switzerland (Clarke et al. 2008, 13). When local agencies proved unable to resolve amnesty cases, the AMM brought in a Swedish judge to render decisions (Aspinall 2008, 20).

Following the conclusion of the AMM's mission in 2006 and the building of more local capacity, civil society groups played a more active role in the transitional justice efforts (Clarke et al. 2008, 15). For example, several Acehnese NGOs facilitated a 'Victims' Congress' in 2007 amassing a repository of victims' testimonies, which could prove useful in later stages of a reconciliation process (Clarke et al. 2008, 15). These activities were in response to continued victim discontent with the lack of justice and accountability for the conflict, as well as the recent evidence of recurring violence against civilians (International Center for Transitional Justice [ICTJ] 2010). As local actors build capacity in the post-conflict environment, the possibility arises of a more active local presence in community-building and statebuilding processes. However, the design phase and the bulk of the implementation phase evidence the strong direction of external actors.

### *Reviving traditional justice practices*

There were several functional reasons why international actors suggested *adat* for the transitional justice programme. First, Aceh suffered from a lack of economic resources, a lack of qualified personnel, and a general lack of infrastructure, which would have made the widespread use of formal justice options untenable (UNDP 2007, 70).<sup>5</sup> Second, Aceh is a part of Indonesia, and therefore Indonesian sovereignty prevented an internationally orchestrated truth commission or trial. Third, *adat* had a perceived legitimacy that was potentially useful in a post-conflict environment. Villagers initially expressed confidence in *adat*, and a fear of bringing in outsiders who might catalyse new conflict (UNDP 2007, 61). Because of *adat*'s focus on village justice, run by village elders, using collectively understood traditions and practices, *adat* presented an apparent indigenous justice option that did not infringe on Indonesia's sovereignty.

*Adat* was designed to be part of an overlapping justice structure, consistent with Indonesia's pluralist justice system. Its components included, in order of legal authority: Indonesian National Law, the Law Governing Aceh, sharia (Islamic law), and finally *adat*. National Law trumps all other legal understandings, and lower-level laws cannot contradict higher laws (UNDP 2007, 42–44). The decentralised nature of *adat*, focusing on village-level justice, created a possible network of justice mechanisms throughout the region, thereby addressing endemic capacity and funding problems. However, in practice both conceptual and implementation problems emerged in a system of overlapping justice purviews, *adat* having no binding or trumping legal authority. This is in keeping with similar problems seen in other developing country pluralist legal systems, where contradictions between formal and informal justice mechanisms can be found (Tamanaha 2011).

There were several problems stemming from the design and structure of this pluralistic and hierarchical justice system. First, the jurisdictional overlap between *adat*, sharia, and national laws, as well as contradictions between *adat* and formal justice systems, caused some legal and moral confusion and manipulation (UNDP 2007, 98). There was confusion among citizens as to how to meld *adat* law with the regionally dominant sharia. One regional conflict negotiator recounted struggling to convince people that *adat* was not necessarily in contradiction with sharia.<sup>6</sup> This is important because of the increased adherence in post-independence Aceh to sharia principles (Kurniawati 2010; Delaistre 2011).

Additionally, National Law trumps all other legal procedures, thereby calling into question the legal standing of *adat* or sharia decisions that contravened Indonesian National Law. In the event of jurisdictional overlap, the UNDP reported both confusion about the process, as well as some citizens venue-shopping for the justice provider perceived to be fairest (UNDP 2007, 98). UNDP surveys have recorded substantial negative feedback regarding the contradictions between *adat* and formal justice systems (2007, Appendix 1).

Second, it is unclear that the use of *adat* systems did resolve disputes. Most villages showed that 80% of grievance issues remained unaddressed, some villages reporting no progress whatsoever (UNDP 2007, Appendix 1). In 2008, victims continued to call for criminal prosecutions of both the GOI and GAM abuses; this would require formal justice mechanisms rather than *adat* structures. Because of Aceh's legacies of multiple religions and traditions, the meaning of traditional *adat* is contested. In ethnically heterogeneous communities, there is substantial mistrust of *adat* because of the perceived lack of fairness (UNDP 2007, Appendix 1). Moreover, even in ethnically homogeneous communities, the conflicts between ex-GAM and ex-militia could not be resolved through *adat* practices, and catalysed renewed conflicts (ICTJ 2010).

Third, this structure created local capacity problems. *Peusijek* ceremonies, loosely translated as the cooling down of flames on both sides, are traditional reconciliation and justice ceremonies administered by village elders and involving the entire community. However, the repositories of the oral *adat* traditions were severely impacted upon by the years of conflict, as well as the tsunami, limiting the capacity to implement *peusijek* ceremonies (Soesangobeng et al. 2009, 149). Additionally, since much of the conflict in Aceh took place at the local level, there was a danger in using local leaders to administer *adat* because many were complicit in the conflict and not necessarily legitimate.<sup>7</sup>

Fourth, the focus on community maintenance and social cohesion over victims' concerns left many grievances to fester. International observers noted that 'Victims of GAM-perpetrated abuses are severely marginalized by the current reintegration process' (Clarke et al. 2008, 28). Previously marginalised groups like women and minorities, continued to be unrepresented by the law (International Development Law Organisation 2008, 1). Human rights abuses, corruption, harassment, and abuse of women went largely unaddressed because they were primarily dealt with using *adat* mechanisms (UNDP 2007, Appendix 1). Women's issues such as rape and domestic violence are routinely ignored by village elders, further marginalising women and widows and flagrantly violating the rights of these women under International Human Rights Law (UNDP 2007, chapter 5; Soesangobeng et al. 2009). A school director in Bireuen recounted how the revival of *adat* resulted in more limitations on women in society than before the conflict.<sup>8</sup> This resonates with some findings in the legal development literature of rights violations for women and minorities when customary or traditional rules and procedures are privileged (Tamanaha 2011, 6–7). There is an unintended but clearly gendered impact of *adat* justice mechanisms which reinforces the male-dominated justice system.

In sum, attempts to recreate traditional justice mechanisms both reified former problems and created new ones. Communities lacked the capacity and legitimacy to implement

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that the indigenous authenticity of *adat* practices would more effectively promote

traditional justice. Privileging tradition also marginalised historically disempowered members of the community. Moreover, reconstructed traditions conflicted at times with new practices and laws. The assumption



participation and reconciliation than formal legal methods proved simplistic. This resonates with the scholarship on legal pluralism which cautions against the idealisation or privileging of local tribunals or customary law structures (Tamanaha 2011, 7).

### ***Democratic Republic of Timor-Leste (East Timor)***

After a short-lived independence from Portugal (nine days), East Timor was annexed by Indonesia and engaged in a protracted separatist conflict from 1975 to 1999, which resulted in approximately 100,000 conflict-related deaths (Benetech Human Rights Data Analysis Group 2006; Nevins 2005). Intense violence erupted in August 1999, following the UN-sponsored referendum on self-determination. As pro-integration militias in East Timor, abetted by Indonesian forces, clashed with the East Timorese pro-independence group Falintil, widespread violence of East Timorese against East Timorese ensued (Robinson 2003). This resulted in the internal displacement of an estimated 300,000 people, an additional 250,000–300,000 fleeing to West Timor (Commission for Reception, Truth and Reconciliation [CAVR] 2006, section 9.1.2, no. 7, p. 3). In October 1999, the UN intervened and established the United Nations Transitional Administration in East Timor (UNTAET) to oversee the peace and independence process (United Nations Organisation 1999). On 20 May 2002, East Timor officially gained independence, and the United Nations Mission of Support in East Timor (UNMISET) was established to shore up the new state (United Nations Department of Peacekeeping Operations 2001).

### ***Designing local transitional justice measures***

The transitional justice programme established in East Timor created a system of overlapping justice mechanisms, incorporating international, national, and local programmes, with ideals based on traditional practices (Nevins 2005, 160–168). At the international level, a hybrid tribunal — the Special Panel for Serious Crimes — was established by the UN in East Timor to prosecute the most serious criminal offenses, such as torture and murder (CAVR 2006, section 9.1.2, no. 15, p. 4). At the regional level, Indonesian courts were also tasked with trying people accused of crimes committed in April and September 1999 (Nevins 2005, 162). At the national level, courts and panels, such as the Ordinary Crimes Panels of the Dili District Court, were given jurisdiction to prosecute less serious crimes. At the local level, the CAVR was established in conjunction with the Community Reconciliation Process (CRP), to promote truth-telling and community reconciliation (CAVR 2006, section 9.1.1, no. 2, p. 2). All levels were supposed to work together to support transitional justice, but, as in Aceh, they did not share equal authority.

International actors under UNTAET had a leading role in developing the locally administered justice and reconciliation programme. The idea for a CRP originated during a series of UNTAET CAVR Steering Committee meetings from September 2000 to January 2001 (CAVR 2006, section 9.1.3, nos 26–27, p. 8). To build local support for the process of reconciliation and transitional justice, the CAVR engaged in community outreach, initiating meetings with local groups, such as Falintil, human rights NGOs, and women and youth groups (CAVR 2006, section 9.1.1–9.1.3). The Steering Committee went to villages and to the sub-district and district levels to engage communities to participate in the design of the programme (CAVR 2006, section 9.1.3, nos 26–27, p. 8). Civil society's involvement was cultivated by international actors in the design phase of the reconciliation programme.

Traditional justice mechanisms called *lisan* procedures (a regional *adat* variant) were incorporated into the CAVR and CRP programmes. As the UN explained, 'any

mechanisms adopted should incorporate traditional *lisan* dispute resolution procedures, however *lisan* alone would not be sufficient. An approach was needed that would link traditional mechanisms to the formal justice system' (CAVR 2006, part 9, p. 9). The resulting system established national-level oversight and administration over local 'traditional' reconciliation ceremonies and hearings (United Nations Organisation 2001; CAVR 2006, part 9, section 9.5, p. 3.). This replicated the system in Aceh and resonated with the mixed system seen in Rwanda.

### *Reviving traditional justice from the outside in*

The CRP's central goal was the reparation and restoration of community bonds through apologies, truth-telling, and community service (Nevins 2005, 168). It included an *acolhimento* or 'reception' component to facilitate the return of East Timorese refugees living in West Timor (CAVR 2006, section 10.1.2, no. 9, p.3). The CRP programmes are often described as indigenously resonant acts of justice and reconciliation. CRP programmes included provisions for *nahe biti boot* or 'spreading of the mat' traditional reconciliation ceremonies (CAVR 2006, part 9, p. 7). Like Acehnese *peusujuk* ceremonies, *nahe biti boot* ceremonies were historically administered by respected village elders and engaged the interests of the community and wider family groups in the process of reconciliation. The incorporation of traditional methods and actors in the reconciliation programme was designed to increase the perceived legitimacy and therefore efficacy of the measures.

The use of traditional symbols and practices and the local orientation of the programme masked the significant role of external actors in its design and implementation. First, local leaders were part of panels that heard reconciliation cases, but they did not have decision-making authority. CRP panels were composed of three to five people and were chaired by a regional commissioner of the CAVR (CAVR 2006, section 9.3). The regional commissioner retained responsibility for the structure of the case (CAVR 2006, section 9.2, p. 10, 12 and section 9.3.5, no. 79, p. 19). The *lia nain*, or spiritual elders, were part of the panels and charged with the ceremonial start and finish of the proceedings but they did not have authority to make decisions or render punishments. In most cases the panel discussed punishment and reconciliation without *lia nain* leaders altogether (CAVR 2006, section 9.3.6, no. 93, p. 24). The CAVR estimated that *lisan* played a part in three-quarters of all CRP hearings, but the extent to which *lisan* practices were used varied substantially across communities (CAVR 2006 section 9.3.6, no. 99, p. 25).

Second, the key role for people outside the community in facilitating local justice was a result of citizens' expressed concerns about the potential bias of local elders (CAVR 2006, section 9.5, no. 120, p. 35). In some cases outside parties might visit the communities every day over a three-month period to try to reassure parties that the procedures would be fair and to encourage traditional *nahe biti boot* ceremonies.<sup>9</sup> In general, the role for traditional leaders in the process of local justice was often symbolic and not necessarily welcomed by the affected communities.

### *Local participation*

At the beginning of the reconciliation programme there was real concern about the lack of citizen interest and participation (CAVR 2006, section 9.3.3, no. 57 and no. 58, p. 15). A film of CRP hearings was produced and shown to local audiences to develop interest (CAVR 2006, section 9.3.3, no. 59, p. 15). News of successful reconciliation procedures was disseminated to 'persuade more and more communities that they too should hold

hearings' (CAVR 2006, section 9.3.3, no. 59, p. 15). Local groups were encouraged and later instructed by external actors in how to use traditional methods. Training details included: diagrams to teach typical *lisan* seating arrangements (CAVR 2006, section 9.3.5, no. 66, p. 15); the structure of traditional *nahe biti boot* ceremonies, including when collective prayers should be recited in *lisan* fashion (CAVR 2006, section 9.3.5, no. 70, p. 18); when and how to have deponents make apologies/oaths as part of *lisan* rituals; and how hearings should be concluded with 'a moral teaching presented on the theme of togetherness' (CAVR part 9, section 9.3.5, no. 82, p. 20). As one human rights organiser and legal expert explained, 'we are selling the idea when in the field'.<sup>10</sup>

Community support for the reconciliation procedures grew with increased awareness and evidence of success in other locales. It was estimated that 40,000 villagers took part in the reconciliation process from August 2002 to March 2004 (CAVR 2006, section 9.4, no. 103, p. 29). Evaluations of the programme conducted by the CRP in 2004 covered five districts and included interviews with approximately 150 people (CAVR 2006, section 9.5, p. 33). Of those interviewed — victims, perpetrators, and community members — 96% said 'the CRP had achieved its primary goal of promoting reconciliation in their community' (CAVR 2006, section 9.5, no. 118, p. 34). Both perpetrators and victims registered support for the process. A typical comment from a victim was, 'I feel very happy about the process because now we can live in peace' (CAVR 2006, section 9.5.1, p. 33). Deponents also were positive: 'We attended two *biti boot* meetings. They were good because through reconciliation we could confess everything that we had done — fighting, burning houses ... through the process we could apologize and they forgave us' (CAVR 2006, section 9.5.1, p. 34).

However, the satisfaction with formal court proceedings compared with *lisan* rulings was very similar among people who used them both (Asia Foundation 2004, 73). Seventy-seven per cent of citizens felt that *lisan* processes reflected their values, while also citing an overwhelming need for reform of the system (75% of people) due to the dangers of bias and the exclusion of women and minorities (Asia Foundation 2004, 6). This suggests that although *lisan* did promote community engagement and reconciliation, citizen use and satisfaction with the formal justice system was comparable. Critically, citizens continued to express concern about the bias of the traditional justice system, in which the interests of certain village elites were disproportionately represented. In particular, *adat* reified the traditional power structures, reinforcing the subjugation of minority groups and women within the post-conflict social hierarchy. This suggests that transitional justice and reconciliation programmes that a priori privilege traditional justice structures over formal legal structures may be failing to reflect the actual needs or wants of the affected communities.

## Conclusion

Through a comparison of the cases of transitional justice in Aceh and East Timor, this paper has attempted to address the two research questions posed in the introduction. First, was there an unexamined role for external actors in community-based programmes in Aceh and East Timor, and can an approach truly be considered bottom-up if it is largely designed and implemented by external actors at the community level? Second, do bottom-up approaches address legitimacy and participation concerns associated with top-down approaches?

To answer the first question, the literature on transitional justice highlights three features normally associated with bottom-up approaches, namely programmes designed by

affected communities, using traditional methods, and implemented by said communities. This paper has traced the active involvement of external actors in the revitalisation, reconstruction, and in some cases implementation of traditional practices in the transitional justice and peacebuilding programmes in Aceh and East Timor. The cases might be better described as hybrid cases, in which international and external actors designed and implemented community-situated reconciliation measures using reconstituted traditional methods. In short, situating the locus of transitional justice at the community level does not make the programme 'bottom-up' in any authentic understanding of the process.

Of potential concern for policymakers, the bottom-up literature is framed as a force for resistance to foreign approaches that are not embedded in community needs and understandings. The generation of culturally resonant solutions to conflict by the affected community is part of the asserted strength and legitimacy of bottom-up approaches. The substantial role of international and external actors in the revival of these traditional practices from the outside-in forces a reassessment of whether and how tradition can be reconstituted by foreign actors, evoking post-colonial power dynamics and issues of hybridity (Bhabha 1994). More careful attention to categorising transitional justice cases will help scholars and practitioners with the challenging process of assessing and comparing the real impact of measures.

With respect to the second question, the bottom-up literature suggests that traditional practices may be more efficacious at promoting reconciliation and justice because they are perceived as more culturally legitimate by affected communities. However, the cases demonstrate that while traditional practices are more familiar, tradition does not

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**The cases demonstrate that while traditional practices are more familiar, tradition does not necessarily equate with legitimacy or efficacy.**

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necessarily equate with legitimacy or efficacy.<sup>11</sup> In both cases there was local resistance to the use of traditional methods. In East Timor, traditions were retaught, even to village elders. Moreover, the use of *adat* did not de facto confer legitimacy on policies and

even had noted gender and minority biases. Finally, participation rates did not improve as a function of *adat*; community outreach improved participation in both formal and traditional justice proceedings.

The potential negative implications of traditional justice measures, like *adat*, have to be considered, since the measures could reify traditional power hierarchies and inequalities. To suggest that traditional *adat* should trump other formal types of dispute resolution mechanisms, such as trials or lustration procedures, would fail to represent the stated desires of local citizens for other justice options and ignore the class and gender implications of such decisions. In short, it would be equally problematic for external actors to impose Western notions of justice as to impose reimagined notions of traditional justice. The cases pose a cautionary reminder about the dual dangers associated with either ignoring customary practices, as has been seen in top-down approaches, or having external or local actors uncritically privilege an imagined indigenous set of practices that may not reflect local needs.

Finally, prioritising bottom-up programmes above all other possible justice interventions may create unreasonable expectations in resource- and capacity-strapped post-conflict societies. After concluding decades of conflict, and in the case of Aceh suffering a devastating tsunami, both Aceh and East Timor had limited resources and capacity to devote to justice programmes. In short, community-designed and -implemented programmes may be economically or politically unfeasible in many



post-conflict environments, creating an unreasonable expectation for some transitional states. Operating on the bottom-up justice approach's a priori assumption that international actors are less efficacious or legitimate than civil society groups could be harmful to peacebuilding and reconciliation efforts in resource- and capacity-compromised communities.

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## Endnotes

<sup>1</sup> This figure is provided by the Badan Reintegrasi Damai Aceh (Aceh Reintegration Agency). The UNDP cites a substantially lower number, 15,000 deaths; see UNDP 2007, 24.

<sup>2</sup> Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement, Helsinki, 15 August 2005. Signed in triplicate in Helsinki, 15 August 2005, witnessed by Martti Ahtisaari, former President of Finland. Available at: [https://www.consilium.europa.eu/uedocs/cmsUpload/MoU\\_Aceh.pdf](https://www.consilium.europa.eu/uedocs/cmsUpload/MoU_Aceh.pdf), accessed July 2014.

<sup>3</sup> Author interview with Indonesian negotiator involved in Helsinki process, Sigit Riyanto, Vice Dean for Academic and Cooperation Affairs, Faculty of Law, Universitas Gadjah Mada, Yogyakarta, 12 July 2010.

<sup>4</sup> See the Aceh Monitoring Mission website: [http://www.aceh-mm.org/english/districtoffices\\_menu/do\\_blang\\_pidie.htm](http://www.aceh-mm.org/english/districtoffices_menu/do_blang_pidie.htm), accessed 24 March 2014.

<sup>5</sup> Multiple author interviews in Yogyakarta, July 2010.

<sup>6</sup> Interview with Samsu Rizal Panggabean, Faculty of Social and Political Sciences, Gadjah Mada University, Yogyakarta, 12 July 2010.

<sup>7</sup> Interview with Sigit Riyanto, 12 July 2010.

<sup>8</sup> Author discussion with local school director, Bireuen, Aceh, 18 July 2010. During the conflict there was a decreased public role for women, and men reinforced this reduced role in the post-war period.

<sup>9</sup> Author conversation with Indonesian conflict management negotiator, Center for Security and Peace Studies, Gadjah Mada University, Yogyakarta, 9 July 2010.

<sup>10</sup> Interview with Sigit Riyanto, 12 July 2010.

<sup>11</sup> Personal discussions with peace and reconciliation advisor who participated in Aceh local reconciliation process, Banda Aceh, July 2010.

## References

- Abu-Nimer, M.** 2000–2001, 'A Framework for Nonviolence and Peacebuilding in Islam' in *Journal of Law and Religion* 15: 217–265.
- ADB** 2009, *Complaint Handling in the Rehabilitation of Aceh and Nias: Experiences of the Asian Development Bank and Other Organizations*, Metro Manila: Asian Development Bank.
- Arriaza, L. & Roht-Arriaza, N.** 2008, 'Social Reconstruction as a Local Process' in *International Journal of Transitional Justice* 2: 2: 152–172.
- Asia Foundation** 2004, *Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor*, Dili: The Asia Foundation.



- Aspinall, E.** 2005, *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?*, Washington, DC: East-West Center.
- Aspinall, E.** 2008, 'Peace without Justice? The Helsinki Peace Process in Aceh', HD Report, Centre for Humanitarian Dialogue, Geneva.
- Avruch, K., Black, P. & Scimecca, J.** 1991 eds, *Conflict Resolution: Cross-Cultural Perspectives*, New York: Greenwood Press.
- Barron, P., Clark, S. & Daud, M.** 2005, *Conflict and Recovery in Aceh: An Assessment of Conflict Dynamics and Options for Supporting the Peace Process*, Washington, DC: World Bank.
- Barron, P., Humphreys, M., Paler, L. & Weinstein, J.** 2009, 'Community-Based Reintegration in Aceh: Assessing the Impacts of BRA-KDP', Indonesian Social Development Paper, No. 12.
- Benetech Human Rights Data Analysis Group** 2006, 'The Profile of Human Rights Violations in Timor-Leste, 1974–1999', Report to the Commission on Reception, Truth and Reconciliation of Timor-Leste, 9 February.
- Bhabha, H.** 1994, *The Location of Culture*, London: Routledge Press.
- Bowen, J.** 1986, 'On the Political Construction of Tradition: Gotong Royong in Indonesia' in *Journal of Asian Studies* 45: 3: 545–561.
- Bowen, J.** 2003, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, Cambridge, UK: Cambridge University Press.
- Braithwaite, J., Braithwaite, V., Cookson, M. & Dunn, L.** 2010, *Anomie and Violence: Non-truth and Reconciliation in Indonesian Peacebuilding*, Canberra: Australian National University E Press.
- Burgess, P.** 2006, 'A New Approach to Restorative Justice: East Timor's Community Reconciliation Processes' in Roht-Arriaza, N. & Mariezcurrena, J. eds, *Transitional Justice in the Twenty-First Century*, New York: Cambridge University Press: 176–205.
- Burnet, J.** 2010, '(In)Justice: Truth, Reconciliation, and Revenge in Rwanda's *Gacaca*' in Hinton, A.L. ed., *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, New Brunswick, NJ: Rutgers University Press: 95–118.
- Clarke, R., Wandita, G. & Samsidar.** 2008, *Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective*, New York: International Center for Transitional Justice.
- CAVR** 2006, 'Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor', CAVR, Dili, Timor-Leste.
- Daly, E.** 2002, 'Transformative Justice: Charting a Path to Reconciliation' in *International Legal Perspectives* 12: 1–2: 73–183.
- De Greiff, P. & Duthie, R.** eds, 2009 *Transitional Justice and Development*, New York: Social Science Research Council.
- Delaistre, A.** 2011, 'In Indonesia's Aceh, Islamic Sharia Law is Applied Harshly and Hypocritically' in *Le Temps*, 8 December.
- DeShaw Rae, J.** 2009, *Peacebuilding and Transitional Justice in East Timor*, Boulder, CO: First Forum Press.
- Diaz, C.** 2008, 'Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia' in McEvoy, K. & McGregor, L. eds, *Transitional Justice from Below*, Oxford: Hart: 189–215.
- Drexler, E.** 2008, *Aceh, Indonesia: Securing the Insecure State*, Philadelphia: University of Pennsylvania Press.
- Henley, D. & Davidson, J.** 2008, 'In the Name of Adat: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia' in *Modern Asian Studies* 42: 2: 815–852.
- Hinton, A.L.** 2010, *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, New Brunswick, NJ: Rutgers University Press.

- Huggins, C.** 2009, 'Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development' in De Greiff, P. & Duthie, R. eds, *Transitional Justice and Development*, New York: Social Science Research Council: 332–374.
- ICTJ** 2010, *The Need for Accountability: The Helsinki Memorandum Five Years on*, New York: International Center for Transitional Justice: <https://www.ictj.org/id/publication/need-accountability-helsinki-memorandum-five-years-indonesian>, accessed July 2014.
- International Development Law Organization** 2008, 'Women and Integrity in Leadership', 12 April: <http://www.idlo.int/DOCNews/219DOCFpdf>, accessed 11 October 2011.
- International Disarmament, Demobilization and Reintegration Congress** 2009, *The Cartagena Contribution to Disarmament, Demobilization and Reintegration*, Cartagena, Colombia: [www.cartagenaddr.org](http://www.cartagenaddr.org)
- Karekezi, U.A., Nshimiyimana, A. & Mutamba, B.** 2004, 'Localizing Justice: Gacaca Courts in Post-genocide Rwanda' in Stover, E. & Weinstein, H. eds, *My Neighbor, My Enemy*, Cambridge, UK: Cambridge University Press: 69–84.
- Kritz, N.** 1996, 'Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights' in *Law and Contemporary Problems* 59: 127–152.
- Kritz, N.** 2009, 'Policy Implications of Empirical Research on Transitional Justice' in Van der Merwe, H., Baxter, V. & Chapman, A. eds, *Assessing the Impact of Transitional Justice*, Washington: US Institute of Peace: 13–21.
- Kurniawati, D.** 2010, 'Shariah in Aceh: Eroding Indonesia's Secular Freedoms' in *Jakarta Globe*, 18 August: <http://yaleglobal.yale.edu/content/shariah-aceh-eroding-indonesia%E2%80%99s-secular-freedoms>, accessed July 2014.
- Li, T.** 2007, 'Adat in Central Sulawesi: Contemporary Deployments' in Davidson, J. & Henley, D. eds, *The Revival of Tradition in Indonesian Politics*, New York: Routledge Press: 336–370.
- Lundy, P. & McGovern, M.** 2008, 'The Role of the Community in Participatory Transitional Justice' in McEvoy, K. & McGregor, L. eds, *Transitional Justice from Below*, Oxford: Hart: 99–120.
- McEvoy, K. & McGregor, L.** 2008, *Transitional Justice from Below*, Oxford: Hart Publishing.
- MOU** 2005, Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement, 15 August. Helsinki: Tim Sosialisasi Aceh Damai.
- Nader, L. & Todd, H.** 1978 eds, *The Disputing Process — Law in Ten Societies*, New York: Columbia University Press.
- Nevins, J.** 2005, *A Not-So-Distant Horror: Mass Violence in East Timor*, Ithaca, NY: Cornell University Press.
- Olsen, T., Payne, L. & Reiter, A.** 2010, *Transitional Justice in Balance*, Washington: US Institute of Peace Press.
- Reid, A.** 2006, *Verandah of Violence: The Background to the Aceh Problem*, Seattle: University of Washington Press.
- Robinson, G.** 2003, *East Timor 1999 Crimes Against Humanity*, New York: United Nations.
- Roht-Arriaza, N. & Orlovsky, K.** 2009, 'A Complementary Relationship: Reparations and Development' in De Greiff, P. & Duthie, R. eds, *Transitional Justice and Development*, New York: Social Science Research Council: 171–213.
- Soesangobeng, H., Fuady, Z. & Nicolas, J.** 2009, *Complaint Handling in the Rehabilitation of Aceh and Nias: Experiences of the Asian Development Bank and Other Organizations*, Metro Manila: Asian Development Bank.
- Stan, L. & Nedelsky, N.** 2013, *Encyclopedia of Transitional Justice*, Vols 1–3, Cambridge: Cambridge University Press.
- Stanley, E.** 2008, 'The Political Economy of Transitional Justice in Timor-Leste' in McEvoy, K. & McGregor, L. eds, *Transitional Justice from Below*, Oxford: Hart: 167–187.

- Stover, E. & Weinstein, H.** 2004, *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge, UK: Cambridge University Press.
- Tamanaha, B.** 2011, 'The Rule of Law and Legal Pluralism in Development' in *Hague Journal on the Rule of Law* 3: 1–17.
- UNDP** 2007, *Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh*: <http://www.undp.or.id/pubs/docs/Access%20to%20Justice.pdf>, accessed July 2014.
- UNDP** 2009, 'Dealing with the Past: UNDP Indonesia supports Multi-stakeholder Consultations on the Draft National Law to Establish a Truth and Reconciliation Commission in Indonesia' in *UNDP Indonesia*, 22 December: 1–3.
- United Nations Department of Peacekeeping Operations** 2001, *East Timor: United National Transitional Administration East Timor*, UNTAET, Dilli: United Nations.
- United Nations Organisation** 1999, UNTEAT Mandate, Security Council Resolution 1272 (1999), 25 October.
- United Nations Organisation** 2001, Regulation No. 2001/10. On the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor. UNTAET/REG/2001/10, 13 July.